1373.

SUPREME COURT OF THE UNITED STATES.

No. 207.

JEREMIAH W. BLYDENBURGH & AL., PLAINTIFFS IN ERROR,

vs.

HENRY AND DAVID COTHEAL.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Writ of error to the court of errors and appeals	1	2
Citation and service	2	2
Writ of error to supreme court of judicature	3	3
Declaration in ejectment	5	4
Issues joined	7	5
Verdict of jury, judgment	8	6
Clerk's certificate	9	6
Proceedings in the court of errors and appeals	10	6
Assignment of error	10	7
Joinder in error	18	10
Judgment of court of errors and appeals	20	11
Judge's statement	21	11
Clerk's certificate	23	14
Proceedings in the court of chancery	24	14
Clerk's certificate	28	18
Assignment of errors in Supreme Court United States	29	18

J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the chancellor of the State of New Jersey, the justices of the supreme court, and the associate justices in the court of errors and appeals, in the last resort in all causes of law and equity of the State of New Jersey, greeting:

[L. S.]

Because, in the record and proceedings, and also in the rendition of the judgment in a plea which is in the said court of errors and appeals before you, between Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, plaintiffs in error, and John Den, on the demise of Henry Cotheal and David Cotheal, defendants in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment be therein given, that then under your seal, distinctly and openly, you send the said records and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, at the Capitol, at the city of Washington, the last Monday of February, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second.

Plaintiffs in error in person.

ALEX'R GARDINER,
Clerk of the U. S. circuit court for the So. Dist. of New York.

Allowed July 17, 1848.

S. NELSON.

Citation.

United States of America, to Henry Cotheal and David Cotheal, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals, in the last resort in all

cases of the State of New Jersey, wherein Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh are plaintiffs, and John Den, on the demise of Henry Cotheal and David Cotheal, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Nelson, one of the justices of the said Supreme Court of the United States, this 17th day of July, in the year of our Lord eighteen hundred and forty-eight, and of the independence of the United States the seventy-third.

S. NELSON.

UNITED STATES OF AMERICA,
State of New York, city and county of New York, ss:

C. N. Potter, of the city of New York, being duly affirmed says, that on this 3d day of November, 1848, he personally served on each of the above named defendants in error, the said Henry Cotheal and David Cotheal, the above citation, by delivering to each of them a copy of said citation, and at the time of such delivery shewing them the said original citation, above written, over the signature of the justice.

C. N. POTTER.

Subscribed and affirmed, this 3d day of November, A. D. 1848.

D. L. GARDINER,
U. S. Com'r.

NEW JERSEY, *ss:*

[L. S.] The State of New Jersey, to our justices of our supreme court of judicature, greeting:

Because in the record and proceedings, and also in the giving of judgment, in a certain plaint which was in our court, before you, between John Den, plaintiff, on the demise of Henry Cotheal and David Cotheal, and Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, senior, defendants, in a plea of trespass and ejectment, manifest error hath intervened to the great damage of the said defendants, as by their complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send to us, distinctly and openly, under your seal, the record and proceedings aforesaid, with all things touching the same, together with this writ, so that we may have the same before our court of errors and appeals, in the last resort in all causes, at Trenton, on the third Tuesday of January instant; that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to law ought to be done.

Witness his honor Oliver S. Halsted, chancellor of our said State, at Trenton aforesaid, the tenth day of January, in the year of our Lord one thousand eight hundred and forty-eight.

JEREMIAH W. BLYDENBURGH,
JULIANA BLYDENBURGH,
ELIZABETH R. BLYDENBURGH,
JULIANA BLYDENBURGH,
Plaintiffs in error in person.
SAML. R. GUMMERE, *Clerk.*

Endorsed.

U. S. court of errors and appeals.

J. W. BLYDENBURGH, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sr.,
vs.
JOHN DEN, ex dem. Henry Cotheal and David Cotheal.

Writ of error to the justices of the supreme court.

Returnable 3d Tuesday of January, 1848.

Plaintiffs in person presented in open court, and return ordered; January 11th, 1848.

HENRY W. GREEN, *Ch. Just.*

Filed January 20, 1848.

CHARLES G. McCHESNEY, *Clk.*

The answer of the justices of the supreme court of New Jersey within named.

The record and proceedings, whereof mention is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within we are commanded.

HENRY W. GREEN. [L. S.]

New Jersey supreme court, as yet of the term of July, in the year of our Lord one thousand eight hundred and forty-seven. Witness Henry W. Green, esquire, chief justice.

J. WILSON, *Clk.*

MIDDLESEX COUNTY, *ss:*

John Den puts in his place William H. Leupp, his attorney, against Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, and Juliana Blydenburgh, in a plea of trespass and ejectment.

MIDDLESEX, *to wit:*

Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, and Juliana Blydenburgh put in their place Robert Adrain, their attorney, at the suit of John Den, in a plea of trespass and ejectment.

MIDDLESEX COUNTY, *ss:*

John Den complains of Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, and Juliana Blydenburgh, in the custody of the sheriff of the county of Middlesex, for this, to wit, that whereas Henry Cotheal and David Cotheal, on the first day of May, in the year of our Lord one thousand eight hundred and forty-seven, at South Amboy, in the county of Middlesex, had demised, sett, and to farm let to the aforesaid John Den, two messuages, two tenements, two barns, two orchards, one garden, one hundred and fifty acres of arable land, one hundred and fifty acres of pasture land, one hundred and fifty acres of meadow land, and one hundred and fifty acres of woodland, with their appurtenances, situate, lying, and being in the township of South Amboy, in the county aforesaid, now or late in the tenure or occupation of Jeremiah W. Blydenburgh and Juliana Blydenburgh. To have and to hold the tenements aforesaid, with the appurtenances, unto the said John Den and his assigns, from the first day of May aforesaid, for, during, and until the full end and term of ten years thence next ensuing, and fully to be completed and ended. By virtue of which demise the said John Den entered into the tenements aforesaid, with the appurtenances, and was thereof possessed, until the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, Juliana Blydenburgh, on the second day of the same month of May, with force and arms, &c., entered on the tenements aforesaid, with appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved, from his said possession; and then and there did other injuries to the said John Den against the peace of this State, and to the damage of the said John Den five hundred dollars; and therefore he brings suit, &c.

And the said Jeremiah W., Juliana, Eliza, and Juliana Blydenburgh, by R. Adrain, their attorney, come and defend the force and injury, when, &c., and say, that they are not guilty of the trespass and ejectment above laid to their charge, in manner and form as the said John Den hath above thereof complained against them; and of this they put themselves upon the country, and the said John Den doth so likewise. Therefore, let a jury thereupon come before the chief justice, or some other justice, of the supreme court of the State of New Jersey, at a circuit court to be holden at New Brunswick, in and for the county of Middlesex, on the second Tuesday of December, in the year of our Lord eighteen hundred and forty-seven, by whom, &c.; and the same day is given to the parties aforesaid there, &c. And now, at this day, to wit, the first Tuesday in January, in the year of our Lord eighteen hundred and forty-eight, before our said supreme court at Trenton, come the plaintiffs, by their attorney aforesaid, and the said justice, before whom, &c., having sent hither his record had before him, in these words, to wit:

Afterwards, to wit, on the fourteenth day of December, in the year

of our Lord eighteen hundred and forty-seven, at a circuit court held at New Brunswick, in and for the county of Middlesex, by the Hon. James S. Nevius, one of the justices of the supreme court of judicature of the State of New Jersey, come the said John Den and the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, and Juliana Blydenburgh, by their aforesaid respective attorneys; and the jurors of the jury, whereof, &c., being summoned, also come, who being duly elected, tried, and sworn to speak the truth of the matters within contained, on their oath, say, that the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, and Juliana Blydenburgh are guilty of the trespass and ejectment within laid to their charge, in manner and form as the said John Den has within complained against them; and they assess the damages of the said John Den, on occasion of the trespass and ejectment aforesaid, over and above his costs and charges by him about his suit in this behalf expended, to six cents, and for those costs and charges to six cents.

Therefore, it is considered that the said John Den do recover against the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Eliza Blydenburgh, and Juliana Blydenburgh, his said term yet to come of and in the tenements aforesaid, with the appurtenances, together with his damages to six cents by the jurors in form aforesaid found, and also sixty dollars and eighteen cents for his costs and charges by the said court now here adjudged of increase to the said John Den, and with his assent.

And hereupon the said John Den prays the writ of the State of New Jersey to be directed to the sheriff of the county of Middlesex aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable, &c.

Judgment signed, this fourth day of January, in the year of our Lord one thousand eight hundred and forty-eight.

HENRY W. GREEN.

I, James Wilson, clerk of the supreme court of the State of New Jersey, do hereby certify, that the foregoing is a true transcript from the record of the judgment and proceedings in the above stated cause.

Witness my hand and the seal of the said court at Trenton, this fifteenth day of January, A. D. eighteen hundred and forty-eight. [L. S.]

J. WILSON, *Clerk*.

In the court of errors and appeals.

JEREMIAH W. BLYDENBURGH, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sen.,
vs.
JOHN DEN, on the demise of Henry Cotheal and David Cotheal.

Afterwards, to wit, in this same term of January, one thousand eight hundred and forty-eight, before the justices of the said court of errors

and appeals in the State of New Jersey, at the State house in the city of Trenton, come the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sen., plaintiffs in error, in proper person, and say that in the records and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said John Den, on the demise [of] Henry Cotheal and David Cotheal, against the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sen., whereas, by the law of the land, the said judgment ought to have been given for the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sen., against the said John Den, on the demise of the said Henry Cotheal and David Cotheal.

There is also error in this, to wit, that by the record aforesaid it appears that on the trial of the issue joined in the cause, at a circuit court held in and for the county of Middlesex, on the 20th day of December, in the year one thousand eight hundred and forty-seven, a general and absolute verdict was given for the said John Den, on the demise aforesaid, against the said plaintiffs in error, and that no points were reserved for, and that such verdict was in no way taken subject to, the opinion of said Supreme Court; nevertheless, in truth and in fact, at the said trial of this issue aforesaid, the points hereinafter mentioned were taken, and such verdict given, subject to the opinion of said Supreme Court thereon, and generally the proceedings following were had:

The said John Den, on the demise aforesaid, by his said counsel, introduced and offered in evidence—

First. The record of a certain deed, dated the——— day of———, 1847, made by John S. Blauvelt, one of the masters of the court of chancery of this State, reciting the decree and execution hereinafter mentioned, and the sale made in pursuance thereof to said Henry and David, whereby was granted to said Henry and David the premises aforesaid.

Secondly. The record of the proceedings in a certain suit in the court of chancery of the State of New Jersey, wherein said Henry and David were complainants, and said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherel, Barnabas Hedge, and Obadiah Holmes, were defendants; which record, among other things, recited a decree of foreclosure made in said last mentioned cause on the —— day of September, A. D. 1845, by the honorable Oliver S. Halsted, chancellor of the State of New Jersey, and also an order made by the said chancellor, and dated the 29th day of January, A. D. 1847; which said order recited a decree made by this court on an appeal from the said chancellor's decree to this court by said Jeremiah and Juliana, on the 28th day of said January, 1847, whereby the said chancellor's decree was in all things affirmed; which said order directed that thereupon execution do issue immediately.

Thirdly. The execution issued by virtue of said order, and an en-

dorsement thereon showing the same to have been issued, and on the 9th day of February, 1847, to have been received by the said master in chancery, to whom the same was directed; and,

Fourthly. Proved by Samuel Gordon, a witness, that the plaintiffs in error herein were then in possession of the premises aforesaid.

Whereupon the said John Den, on the demise aforesaid, without offering or introducing any other evidence, rested his said cause.

Whereupon said defendants, the plaintiffs in error, moved said circuit court to nonsuit said plaintiff, and made in support of their said motion the points following, to wit:

First point. That the defendants in error took no title by said master's deed, on the sale made in pursuance of the said execution, because said execution, as appeared by the record and evidence introduced, and the plaintiff's own showing, was issued within the term of ten entire days, exclusive of Sundays, after the rendition of the decree of a court of errors, by virtue of which it issued to enforce said chancellor's decree thereby affirmed; and further, that it so likewise appeared that said court of errors was the highest court of law and equity in said State.

For by the twenty-third section of the act of Congress of the United States, entitled "an act to establish the judicial courts of the United States," passed September 24, 1789, it is provided, that a writ of error issued out of the Supreme Court of the United States to any circuit court thereof, shall be a supersedeas and stay execution in cases only where the writ of error shall be served in the manner therein prescribed, within ten days, Sundays exclusive, after rendering the judgment or passing the decree complained of; until the expiration of which term of ten days execution shall not issue in any case where a writ of error may be a supersedeas. That such writ of error may be a supersedeas in all cases in which it can be issued and served within the time and manner aforesaid.

That such writ may be so issued and served in all cases in which it may issue at all.

Hence, that it follows in all cases in which a writ of error may issue from said Supreme Court of the United States to any circuit court thereof, no execution shall issue to enforce the judgment or decree of such circuit court complained of, until the expiration of ten days as aforesaid.

That by the twenty-fifth section of the same act it is further provided, that, in the cases therein mentioned, the final judgment or decree in any suit in the highest court of law or equity of a State in which a decision in the suit could be had, may be re-examined and reversed or affirmed in said Supreme Court of the United States upon a writ of error, such writ issued as therein provided, in the same manner, under the same regulation; and such writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in any circuit court of the United States.

That said cause, wherein a decree was made as aforesaid in this

court, came within the cases provided in said twenty-fifth section, and that in any case a writ of error would lie from the Supreme Court of the United States to this court, to determine whether the judgment or decree complained of came within the cases provided for in said twenty-fifth section or not.

That hence no execution could lawfully issue to enforce said decree of this court, made on the twenty-eighth day of January, 1847, until the expiration of the term of ten days, Sundays exclusive, thereafter; and that any such execution (and that under the sale, made by virtue whereof the said John Den on the demise aforesaid claimed, was such execution) was the process of a State court which conflicted with a law of the United States, and therefore utterly void.

Second point. That even were said execution valid, and did said John Den, on the demise aforesaid, become entitled, by virtue of the sale made in pursuance of said execution, to the title which said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wardsworth, Nathaniel Wetherill, Barnabas Hedge, and Obadiah Holmes, had on the day of the date of the mortgage in said foreclosure suit, wherein they were defendants mentioned to the premises aforesaid, yet said defendants would not be entitled to recover against any of the defendants, the plaintiffs in error herein, other than said Jeremiah W. and Juliana, the possession of the said premises; because the said John Den, on the demise aforesaid, offered no evidence to show that it no where appeared that the said Jeremiah, Juliana, Wardsworth, Wetheril, Hedge, and Holmes, did, at the date of said mortgage, either occupy or hold said premises by good title thereto, or that the defendants, plaintiffs in error herein, other than said Juliana and Jeremiah, that is to say, said Elizabeth R. and Juliana, senior, might not have, and had not entered, or did not then hold, said premises by title paramount to that which said defendant, in said foreclosure suit, had at the date of the mortgage aforesaid, or might since then have acquired.

Whereupon the said circuit judge refused to decide the said points raised by the said defendants, plaintiffs in error, and the nonsuit moved for thereon, but directed that a verdict be and the same was taken for the said John Den, on the said demise, subject to the opinion of the said supreme court of New Jersey, on the points submitted by the defendants, now plaintiffs in error, with leave to turn the same into a case made or bill of exceptions; nevertheless, there is no record, minute, or reference, to said proceedings, evidence, motion, ruling, or points in said record; therefore in that there is manifest error.

There is also error in this, to wit, that upon said points, reserves as aforesaid, a motion was made before the justices of said supreme court, on the sixth day of January, in the year one thousand eight hundred and forty-eight, by the plaintiffs in error herein, for a rule on the said John Den, on the demise aforesaid, to show cause why the judgment of the said supreme court should not be rendered for the plaintiffs in error, notwithstanding the verdict so taken at said circuit court. That upon such motion for a rule, the verdict so taken at the circuit

court was admitted and signed by the counsel for the defendants in error, as having been taken subject to the opinion of the supreme court upon such motion for a nonsuit, and the points by the said defendants then submitted and reserved; which said points and their reservation, and the fact that motion for a nonsuit was denied as aforesaid, were, on said motion to the supreme court for the rule aforesaid, also admitted and argued, and by the counsel for the said defendants in error; and said motion for a rule was thereupon by said supreme court denied. Yet, nevertheless, neither said points reserved as aforesaid, nor the proceedings at the circuit aforesaid, nor the said points and proceedings admitted and argued before said supreme court, any where appear in the record of said court returned to the said writ of error, nor that said motion for a rule was ever made, argued, and admitted to be founded on the said reserved points, and in that there is manifest error.

Hereupon the said plaintiffs in error pray a writ of the State of New Jersey, to be directed to the judges of the said supreme court, to certify to the judges of this court the foregoing facts and proceedings. And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said plaintiffs in error may be restored to all things which they have lost by occasion of the said judgment.

J. W. BLYDENBURGH,
JULIANA BLYDENBURGH,
ELIZABETH R. BLYDENBURGH,
JULIANA BLYDENBURGH, Senior,
Plaintiffs in error.

Filed, February 16, 1848.
CHARLES G. McCHESNEY, *Clerk.*

New Jersey court of errors and appeals, in the last resort in all causes, &c.

JOHN DEN ex. demise Henry Cotheal and David Cotheal,
vs.
JEREMIAH W. BLYDENBURGH, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, senior. } In error.

And the said John Den, by W. H. Leupp, his attorney, comes into court and saith, that there is no error either in the record and proceedings aforesaid, or in the giving the judgment aforesaid; and further, by way of protestation and denial, saith, that in truth and fact the justice before whom said trial was had did not refuse to decide any question made or taken at said trial, as in the said assignment of errors in that behalf is alleged. And the plaintiff aforesaid prays that the court of errors and appeals, in the last resort, &c., may proceed to examine as well the record and proceedings aforesaid, in the matters aforesaid as-

signed for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

W. H. LEUPP, *Att'y of def'ts in error.*

New Jersey.—John Den puts in his place W. H. Leupp, his attorney, against Jeremiah Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, senior, in a plea of trespass and ejectment, in error, &c.

Filed March 9, 1848.

Court of errors and appeals, N. J., Oct. term, 1848.

JEREMIAH W. BLYDENBURGH & al., pltfs.
vs.
DEN ex. dem. Henry Cotheal & al., defts. } In error sup. court.

This cause coming on to be heard in the presence of the counsel of the respective parties, and the court having inspected the record and proceedings, and maturely considered the same, it is ordered and decreed, that the judgment of the supreme court be in all things affirmed, with costs in this appeal to be taxed, and that the record and proceedings be remitted to the supreme court to be proceeded in according to law.

On motion of Wm. H. Leupp, attorney of defendants.

STATE OF NEW JERSEY:

I, Charles G. McChesney, secretary of State of the State of New Jersey, and ex officio clerk of the court of errors and appeals, [SEAL.] do hereby certify, that the foregoing is a true copy of the proceedings had in the said court in the within stated cause. And I do further certify, that a copy of a writ of error to the Supreme Court of the United States, and bond accompanying the same, were filed in my office on the 28th day of October, eighteen hundred and forty-eight.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Trenton, this eighth day of November, eighteen hundred and forty-eight.

CHARLES G. McCHESNEY,
Secretary of State and clerk of appeals.

Judge's statement.

Supreme court, New Jersey.

JOHN DEN ex dem. Henry Cotheal and David Cotheal,
vs.
JEREMIAH W. BLYDENBURGH, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sen.

The issue joined in this cause came on to be tried before a circuit court for the county of Middlesex, on the 20th day of December, 1847,

whereupon the said John Den, on the demise aforesaid, by his said counsel, introduced and offered in evidence:

First. The record of a certain deed, dated the 1st day of May, A. D. 1847, made by John S. Blauvelt, one of the masters of the court of chancery of this State, reciting the decree and execution hereinafter mentioned, and the sale made in pursuance thereof to said Henry and David, whereby was granted and conveyed to said Henry and David the premises aforesaid.

Second. The record of the proceedings in a certain suit in the court of chancery of the State of New Jersey, wherein said Henry and David were complainants, and said Jeremiah Blydenburgh, and Juliana Blydenburgh, Charles Wardsworth, Nathaniel Witheral, Barnaby Hedge, and Obadiah Holmes, were defendants; which record, among other things, recited a decree of foreclosure, made in said last mentioned cause, on the day of September, A. D. 1845, by the Hon. Oliver S. Halstead, chancellor of the State of New Jersey, and also an order made by the said chancellor, and dated on the 29th day of January, A. D. 1847, which said order recited a decree made by this court, on an appeal from the said chancellor's decree to this court by said Jeremiah and Juliana, on the 28th day of said January, 1847, whereby the said chancellor's decree was in all things affirmed, which said order directed that thereupon execution do issue immediately.

Thirdly. The execution issued by virtue of said order, and an endorsement thereon, showing the same to have been issued, and on the 9th day of February, A. D. 1847, to have been received by the said master in chancery, to whom the same was directed; and

Fourthly. Proved by Samuel Gordon, a witness, that the plaintiffs in error herein were then in possession of the premises aforesaid.

Whereupon said John Den, on the demise aforesaid, without offering or introducing any other evidence, rested his said cause.

Whereupon said defendants, the plaintiffs in error, moved said circuit court to nonsuit said plaintiffs, and made, in support of their said motion, the points following, to wit:

First point. That the defendants in error took no title by said master's deed on the sale made in pursuance of the said execution. Because

Said execution, as appeared by the record and evidence introduced, and the plaintiff's own showing, was issued within the term of ten entire days, exclusive of Sundays, after the rendition of the decree of the court of errors, by virtue of which it issued to enforce said chancellor's decree thereby affirmed. And, further, that it so likewise appeared that said court of errors was the highest court of law and equity in said State.

For by the twenty-third section of the act of Congress of the United States, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, it is provided:

That a writ of error, issued out of the Supreme Court of the United States, to any circuit court thereof, shall be a supersedeas, and stay execution in cases only where the writ of error shall be served in the man-

ner therein prescribed, within ten days, Sundays exclusive, after rendering the judgment, or passing the decree complained of. Until the expiration of which term of ten days, execution shall not issue in any case where a writ of error may be a supersedeas.

That such writ of error may be a supersedeas in all cases in which it can be issued and served within the time and manner aforesaid.

That such writ may be so issued and served in all cases in which it may issue at all.

Hence, that it follows in all cases in which a writ of error may issue from said Supreme Court of the United States to any circuit court thereof, no execution shall issue to enforce the judgment or decree of such circuit court complained of until the expiration of ten days as aforesaid.

That, by the twenty-fifth section of the same act, it is further provided, that in the cases therein mentioned the final judgment or decree in any suit in the highest court of law or equity of a State in which a decision could be had, may be examined and reversed, or affirmed in said Supreme Court of the United States upon a writ of error, such writ being issued as therein provided, in the same manner and under the same regulation; and such writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in any circuit court of the United States.

That said cause, wherein a decree was made as aforesaid in this court, came within the cases provided in said twenty-fifth section, and that in any case a writ of error would lie from the Supreme Court of the United States to this court, to determine whether the judgment or decree complained of came within the cases provided for in said twenty-fifth section or not.

That since no execution could lawfully issue to enforce said decree of this court, made on the twenty-eighth day of January, 1847, until the expiration of the term of ten days (Sundays exclusive) thereafter; and

That any such execution, and that under the sale made by virtue whereof the said John Den, on the demise aforesaid, claimed was such execution, was the process of a State court, which conflicted with a law of the United States, and therefore wholly void.

Second point. That even were said execution valid, and did said John Den, on the demise aforesaid, become entitled, by virtue of the sale made in pursuance of said execution, to the title which said Jeremiah W. Blydenburgh, Juliana Blydenburg, Charles Wardsworth, Nathaniel Wetheral, Barnabas Hedge, and Obadiah Holmes, had on the day of the date of the mortgage in said foreclosure suit, wherein they were defendants, mentioned to premises aforesaid, that the said defendants would not be entitled to recover against any of the defendants, the plaintiffs in error herein, other than said Jeremiah W. B. and Julianna, the possession of the said premises; because

The said John Den, on the demise aforesaid, offered no evidence to show, and that it no where appeared, that the said Jeremiah, Julianna, Wardsworth, Wetheral, Hedge, and Holmes, did, at the date of said

mortgage, either occupy or hold said premises by good title thereto, or that the defendants, plaintiffs in error herein, other than said Juliana and Jeremiah, that is to say, said Elizabeth R. and Julianna, sen., might not have, and had not entered, or did not then hold said premises by title paramount to that which said defendants in said foreclosure suit had at the date of the mortgage aforesaid, or might since then have acquired. Whereupon the presiding judge at said circuit court denied the motion for a non-suit, but reserved the points upon which such motion was made for the consideration of the Supreme Court on the coming in of the parties.

JAMES S. NEVIUS.

I, Samuel R. Gummere, clerk of the court of chancery of the State of New Jersey, do hereby certify, that the papers used in the court of errors and appeals of said State, in the case wherein Henry Cotheal and David Cotheal were complainants, and Jeremiah W. Blydenburgh and al. were defendants, were remitted to the court of chancery on the first day of February, in the year of our Lord one thousand eight hundred and forty-seven.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court of chancery, at Trenton, the fourteenth [L. S.] day of April, in the year of our Lord eighteen hundred and forty-seven.

SAML. R. GUMMERE, *Clerk.*

Order for execution, &c.

In chancery of New Jersey, between Henry Cotheal and David Cotheal, complainants, and Jeremiah Blydenburgh and others, defendants.

This matter being opened to the court by William H. Leupp, of counsel with the complainants, and it appearing that a final decree in the above stated cause, directing the sale of the mortgaged premises set forth and described in the complainants' bill, was made on the sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, and that an appeal from the said decree by the defendants, Jeremiah Blydenburgh and Julia Blydenburgh, and it further appearing that the papers in this cause have been returned to the clerk of this court by the clerk of the court of errors and appeals, together with a certified copy of a decree made by the said court of errors and appeals on the twenty-eighth day of January, A. D. 1847, affirming the aforesaid decree of the chancellor in all things, and directing the record to be remitted to this court, to be proceeded in according to law: It is now, on this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-seven, on motion of William H. Leupp, of counsel with the complainants, ordered that an execution or writ of fieri facias do issue forthwith for the sale of the said mortgaged premises, according to the said decree made on the sixteenth day of September, A. D. 1845. And it is further ordered, that the costs of this order be in-

cluded in the complainants' costs, which were directed in the said last mentioned decree to be paid.

O. S. HALSTED, *C.*

A true copy. SAM. R. GUMMERE, *Clerk.*

NEW JERSEY, *to wit:*

[L. S.] The State of New Jersey to John S. Blauvelt, esq., master in chancery of said State, greeting:

Whereas on the sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, by a certain decree, made in our court of chancery, before our chancellor, at Trenton, in a certain cause therein depending, wherein Henry Cotheal and David Cotheal were complainants, and Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherel, junior, Barnabas Hedge, and Obadiah Holmes, were defendants; it was ordered, adjudged, and decreed, that so much of certain mortgaged premises, with the appurtenances in the bill of complaint in the said cause particularly set forth and described, that is to say, all that certain tract or parcel of ground or land commonly known as the Lazarus Wilment tract, situate, lying, and being in the township of South Amboy, county of Middlesex, and State of New Jersey, beginning at the edge of the Amboy bay, where the line of General James Morgan, late of the township of South Amboy, county and State aforesaid, deceased, touches the same; thence along the aforesaid line, south sixty-three degrees and thirty minutes west, fifty chains fifty-two links, to a stake; thence north twenty-seven degrees and thirty minutes west, twenty-eight chains and forty links, to a stake; thence north sixty-five degrees east, thirty-two chains and ninety-four links, to the aforesaid bay shore; thence down the same, the several courses thereof, to the place of beginning; (saving and excepting out of the said tract above described the small piece or parcel of ground said now, or lately, to belong to Peter Johnson, being about three acres, more or less, and situate upon and near the northwesterly corner of the said tract of land above described;) the said tract of land hereby conveyed, or intended so to be, (after saving and reserving thereout the small lot aforesaid,) containing one hundred and six acres, be the same more or less; (the said premises above described being the same which were conveyed to the said Jeremiah W. Blydenburgh, by the said Henry Cotheal and David Cotheal, and their respective wives, in and by a certain deed bearing date the eighth day of November, one thousand eight hundred and thirty-six, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Charles Wadsworth, Nathaniel Wetherel, junior, Barnabas Hedge, and Obadiah Holmes, of, in, to, and out of the same, as

may be needful and necessary for the purpose, be sold to pay and satisfy unto the said complainants the sum of eight thousand and forty-six dollars and ninety-four cents, the principal and interest, secured by a certain mortgage given by Jeremiah W. Blydenburgh to the said complainants, bearing date the eighth day of November, in the year of our Lord one thousand eight hundred and thirty-six, together with lawful interest thereon, from the twenty-second day of July, eighteen hundred and forty-five, until the same be paid and satisfied; and also the costs of the said complainants, with interest from the date of said decree; and that for that purpose a writ of fieri facias should issue, directed to John S. Blauvelt, master as aforesaid, commanding him to make sale as aforesaid, and that the surplus money arising from such sale, if any there be, should be brought into the said court, subject to the further order of the said court, as by the said decree, remaining as of record in our said court of chancery at Trenton, doth and may more fully appear; and whereas the defendants, Jeremiah W. Blydenburgh and Juliana Blydenburgh, appealed from the said decree, and our court of errors and appeals have affirmed the said decree in all things, and ordered their record to be remitted to our said court of chancery, to be proceeded in according to law, and our chancellor has made an order, bearing date the twenty-ninth day of January, 1847, directing that a writ of fieri facias should forthwith issue for the sale of the said premises according to the aforesaid decree, and directing that the costs of the said order should be included in the said taxed costs of the complainants; and whereas the costs of the said complainants have been duly taxed at one hundred and thirty-seven dollars and ninety-seven cents, therefore, you are hereby commanded, that you cause to be made of the premises aforesaid, by selling so much thereof as may be needful and necessary for the purpose, the said sum of eight thousand and forty-six dollars and ninety-four cents, together with lawful interest thereon as aforesaid, and also the said sum of one hundred and thirty-seven dollars and ninety-seven cents of costs, with interest thereon as aforesaid; and that you have those moneys before our said chancellor in our court of chancery aforesaid at Trenton, on the third Tuesday of March next, to render to the said complainants, and also the surplus money, if any there be, to abide the further order of our said court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

Witness Oliver S. Halsted, esquire, our chancellor at Trenton aforesaid, this ninth day of February, in the year of our Lord one thousand eight hundred and forty-seven.

SAMUEL R. GUMMERE, *Clerk.*
WILLIAM H. LEUPP, *Solicitor.*

Received 9th February, 1847.

J. S. B., *M. C.*

Levy.

By virtue of this writ, I have advertised, according to law, the lands, tenements, hereditaments, and real estate within described, to be sold at public vendue and outcry, at the inn kept by Samuel Gordon, in the township of South Am., in the county of Middlesex, on the 17th day of April next, at two o'clock, between the hours of twelve and five o'clock in the afternoon of said day.

Dated New Brunswick, March 16, 1847.

J. S. BLAUVELT,
Master in Chancery of New Jersey.

Statement.

Amount due complainants by decree on 22d July, 1845		$8,046 94	
Interest thereon to April 17, 1847		838 63	
Amount of principal and interest due complainants April 17, 1847			$8,885 56
Complainants' costs taxed at		137 97	
Interest from Sept. 16, 1845, to April 17, 1847		13 11	
Costs and interest thereon due complainants to April 17, 1845			151 08
Whole amount due complainants April 17, 1845			9,036 65
Amount of sales of mortgaged lands, April 17, 1847		1,600 00	
Deduct master's fees, viz: serving writ and return	$1 12		
Advertising	5 00		
Crying vendue, one day	1 00		
Cash paid publishing*ing* advertisement in the Times newspaper	4 75		
Deed and acknowledgment	3 00		
Statement of sales, &c.	1 00		
Commissions on $1,600, 2 per cent. on $1,000, and 1 per cent. on $600	26 00	41 87	
Nett proceeds of sales made April 17, 1847			$1,558 13
Balance due complainants, April 17, 1847			$7,478 52

I certify the foregoing to be a true statement and calculation of the amounts due to the complainants on the above stated decree and execution, on the day of the date of the sale of said mortgaged lands and premises; and also of the amount of sales of said mortgaged lands, and the master's fees, &c.; and that there remained due to the complain-

ants, on the day of the date of said sales, upon the above stated decree and execution, the sum of seven thousand four hundred seventy-eight dollars and fifty-two cents. $7,478\frac{52}{100}$.

Dated New Brunswick, April 26, 1847.

J. S. BLAUVELT,
Master in Chancery.

I, Samuel R. Gummere, clerk of the court of chancery of the State of New Jersey, do hereby certify, that the foregoing is a true copy of the record of executions in book D, 2, page 389, &c., together with the levy and return of the master, remaining in my said office.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court of chancery at Trenton, the sixth day of [L. S.] September, in the year of our Lord one thousand eight hundred and forty-seven.

SAMUEL R. GUMMERE, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

JEREMIAH W. BLYDENBURGH, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, sen. vs. JOHN DEN, on the demise of Henry Cotheal and David Cotheal.	Assignment of errors.

UNITED STATES OF AMERICA, *ss:*

Afterwards, to wit, in this same term of December, one thousand eight hundred and forty-eight, before the justices of the said Supreme Court of the United States, at the Capitol, in the city of Washington, come the said Jeremiah W. Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, senior, plaintiffs in error, in proper person and say, that in [the] record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, in this, to wit:

That by the record aforesaid it appears that judgment of the said supreme court of New Jersey aforesaid, in form aforesaid given, for the said John Den, on the demise of the said Henry Cotheal and David Cotheal, against the said Jeremiah Blydenburgh, Juliana Blydenburgh, Elizabeth R. Blydenburgh, and Juliana Blydenburgh, senior, was by the said court of errors and appeals in all things affirmed; whereas, by the law of the land, the said judgment ought to have been set aside by the said supreme court, and the said writ of error in the said court of errors and appeals should have been quashed, and the said record remitted to the said supreme court to correct the errors in fact, and proceed according to law and the custom of the United States.

There is also manifest error in this, to wit, that by the record of the said court of errors and appeals of the State of New Jersey it appears that the aforesaid plaintiffs in error sued out a writ of error to the justices of the supreme court of New Jersey, returnable in said court of er-

rors and appeals; and on the return of said writ of error in the said court of errors and appeals of the State of New Jersey, assigned for error certain errors in fact in the proceedings of the said supreme court of New Jersey, contrary to the Judiciary act of the United States therein referred to; which proceedings so alleged were admitted to be true by the said defendants in error by a general joinder in error in the said court of errors and appeals of the State of New Jersey, as well as by the statement of James S. Nevius, one of the justices of the said supreme court of New Jersey; and the said court of errors and appeals being a court strictly appellate, without jurisdiction of errors in fact, and therefore unable to reverse the said judgment of the said supreme court of New Jersey, nevertheless affirmed the judgment of the said supreme court, and thereby assumed the said errors in fact assigned to be true, and incorporated them into their own record as errors in law by such assignment, joinder, and judgment; therefore in that there is manifest error.

There is also error in this, to wit, that by the record of the said court of errors and appeals it appears, that because the said court had no jurisdiction of errors in fact, they have assumed to decide against the Judiciary act of the United States, and remitted the record of the said supreme court of New Jersey to such court, together with their own judgment in affirmance thereof, with directions to proceed according to law, when the said supreme court are thereby compelled to enforce such judgment, contrary to the 25th section of the Judiciary act of the United States, passed the 24th of September, 1789, and are thereby rendered unable to correct their own judgment, and proceed according to law; therefore in that there is manifest error.

There is also error in this, to wit, that by the record of the said court of errors and appeals of the State of New Jersey, it appears that they have decided, that an execution issued under the direction of the highest court of law or equity in a State, in which a decision could be had before the expiration of ten days, exclusive of Sundays, from the rendition of such final judgment under whose authority it issued may be enforced, whether such judgment be reversed by this court or otherwise; therefore in that there is manifest error.

And the said plaintiffs in error pray, that the judgment of said court of errors and appeals of the State of New Jersey for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be by this court reversed, annulled, and altogether held for nothing, and that a special mandate issue from the Supreme Court of the United States to the supreme court of New Jersey, commanding them to proceed according to the directions of this court and the laws and custom of the United States.

J. W. BLYDENBURGH,
For himself and co-plaintiffs in error, in person.

Filed 9th December, 1848.